IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1439/2002
Reserved on 25.4.2007
Date of decision 21.5.2007

Vijay Kumar and others. **…Petitioners.**

Versus

State of H.P. & others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioners : Mr. M.S. Guleria, Advocate.

For the respondents : Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Meenakashi Sharma, Dy.As.G.

Rajiv Sharma, J. (Oral)

By the medium of this petition, the petitioner has sought the following reliefs:

(i) **"That the order dated 6.4.2000 passed by respondent No.2 vide Annexure P-1 may kindly be set aside and quashed.**

(ii) **That the respondent No.2 may be directed to decide the case on merits and make the payment of compensation to the petitioner.**

(iii) **That the respondents may be directed to produce the entire record of the case.**

(iv) **Any other relief, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner in the interest of justice and fair play."**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?No.

The brief facts for the adjudication of this petition are that the predecessor-in-interest of the petitioners, namely, Sh. Kishan Chand was allotted land measuring 5-12-13 bighas comprised in khasra No. 267 by way of Nautor in the year 1973. He was put in possession of the land by the Revenue Authorities and *Patta* was granted in his favour. In the year 1976, a portion of land comprising khasra No. 267/1 was utilized by the Public Works Department for the construction of road without initiating acquisition proceedings in accordance with law. A notification was issued under section 4 of the Land Acquisition Act, 1894, which was duly published in the H.P. Rajpatra on 1.8.1998 and subsequently notifications under sections 6 and 7 of the Land Acquisition Act, 1894 were issued for the acquisition of land bearing khasra No. 267/1 and 281/1. The Land Acquisition Officer, PWD, Mandi has passed the award on 6.4.2000 with regard to khasra No. 281/1 measuring 4bighas 19 biswas but the Khasra No. 267/1 measuring 1-11-14 bighas was left out.

Mr. M.S. Guleria, Advocate appearing on behalf of the petitioners has strenuously argued that once the land measuring 5-12-13 bighas by way of Nautor was allotted to the predecessor-in-interest of the petitioners in the year 1973, he has become the absolute owner of the same after the *Patta* has been granted in his favour. Mr. Guleria has further elaborated his submissions that the Land Acquisition Officer was bound to award compensation for Khasra No. 267/1 measuring 1-11-14 bighas.

I have heard the parties and perused the record.

There is no dispute that the land measuring 5-12-13 bighas was allotted in favour of the predecessor-in interest of the petitioners in the year 1973 by way of Nautor. The predecessor in interest of the petitioners was put in possession of the land and consequently *Patta* was also granted in his favour. The predecessor in interest of the petitioners had

become the absolute owner of the same after the issuance of Patta in his favour. The land of the petitioners could only be utilized for the construction of road in accordance with law. The procedure prescribed under the Land Acquisition Act, 1894 was to be followed before utilizing the land of petitioners for the purpose of construction of road. The only ground mentioned by the Land Acquisition Officer in his order dated 6.4.2000 for not awarding the compensation is that when the State resumed the land for the public purpose, no compensation could be awarded for Khasra No. 267/1.

There is a detailed procedure prescribed for revoking the land once allotted in favour of a person under the H.P. Nautor Rules, 1968. The land has been allotted to the predecessor in interest of the petitioners under the H.P. Nautor Rules, 1968. Until and unless the land of the petitioners was revoked as per the provisions of H.P. Nautor Rules, 1968, the same could not be left out for the purpose of awarding compensation by the Land Acquisition Officer. The Land Acquisition officer has presumed in his order dated 6th April, 2000 that the State has resumed the land for the public purpose. There ought to have been a specific order of the competent authority that a particular portion of the land i.e. measuring 1-11-14 bighas has been revoked. Admittedly no such order has been passed by the competent authority to revoke the land of the petitioners measuring 1-11-14 bighas comprising khasra No. 267/1.

In the reply filed by the state, it is mentioned that the predecessor in interest of the petitioners has not been awarded compensation for khasra No. 267/1 on the basis of the judgment of this Court in CWP No. 676 of 1998 titled Bresti Ram Vs. State of H.P. and others decided on 20th April, 1999. I have carefully gone through the judgment dated 20th April, 1999. The Hon'ble Division Bench has decided the civil writ petition (CWP No.

676 of 1998) on the premise that the land granted to the petitioner under Nautor was revoked. In the present case admittedly, the State has not placed on record any material to the effect that the land of the petitioners was ever resumed in conformity with the provisions of Himachal Pradesh Nautor Rules, 1968.

The Hon'ble Supreme` Court has held in ***Spl. L.A. and R. Officer Vs. M.S. Seshagiri Rao***, AIR 1968 SC 1045 has held as under:

> **"On April 15, 1952, the Government of Mysore granted an area of 11 acres and 38 gunthas of land situate in village Hebbyle to the respondents to this appeal. The grant was made in Form Appendix 'E' to the Mysore Land Revenue Rules with the added condition that "in the event of the Government requiring the land for any reason whatsoever, the grantee shall surrender the land to the "Government without claiming any compensation". On January 11, 1958, the Government of Mysore published a notification under S. 4 of the Land Acquisition Act that the land granted was likely to be needed for a public purpose. By a subsequent notification made under S. 17 (4) of the Land Acquisition Act Government dispensed with the enquiry under S. 5 of the Act and obtained possession of the land. In assessing compensation, the Land Acquisition Officer did not award any compensation for the land, and awarded Rs. 1,495/- for improvement claimed to have been made to the land by the grantees. In a reference under S. 18 of the Land Acquisition Act, the District Court agreed with the Land Acquisition Officer. In appeal, the High Court of Mysore set aside the award and remanded the case to the District Court with a direction to determine the compensation**

payable to the grantees and to dispose of the case according to law. The High Court observed that since the Government had failed to exercise the right which it had under the terms of the grant and had adopted the procedure prescribed by the Land Acquisition Act, compensation for acquisition under the Land Acquisition Act and the process by which the grantees were to be deprived of the land must be followed. Against the order passed by the High Court, this appeal is preferred with special leave.

The Government of Mysore did not purport to exercise the Power reserved by the terms of the grant, and adopted the procedure prescribed by the Land Acquisition Act. The High Court observed, relying upon the decision of the House of Lords in Attorney-General v. De Kayser's Royal Hotel Ltd. 1920 AC 508 that the Government could not, after adopting the procedure prescribed by the Land Acquisition Act, seek to resort to the conditions of the grant and claim that no compensation for acquisition of the land was payable. It is true that after obtaining possession of the land in pursuance of statutory authority under S. 17, the Government of Mysore could not seek to exercise the option conferred by the terms of the grant. But on that account in assessing compensation payable to the grantees, existence of the condition which severely restricted their right could not be ignored. The grantees were entitled to compensation for the land of which the ownership was vested in them. The measure of that compensation is the market value of the land at the date of the notification, and the measure of that market value is what a

willing purchaser may at the date of the notification under S.4 pay for the right to the land subject to the option vested in the Government.

But the view expressed by the District Court that the grantees are not entitled to any compensation for the land cannot be sustained. The District Court was bound to determine the market value, at the date of the notification under S. 4 of the Land Acquisition Act, of the interest of the grantees in the land."

I am of the firm view that the petitioners are entitled to get the compensation of the land comprising khasra No. 267/1 measuring 1-11-14 bighas and the same has been wrongly left out by the Land Acquisition Officer in his award dated 6th April, 2000. The Land Acquisition Officer has come to a wrong conclusion that the land of the petitioners has been resumed by the State, which admittedly could be done in accordance with the provisions of Himachal Pradesh Nautor Rules, 1968.

Consequently this writ petition is allowed. The award dated 6.4.2000 (Annexure P-1) is quashed and set aside only to the extent whereby the land comprising khasra No. 267/1 measuring 1-11-14 bighas had been left out for the purpose of awarding compensation. The respondent No.2 is directed to determine and pay the compensation to the petitioners within a period of three months from today as per notification issued under section 4 of the Land Acquisition Act on 1.8.1998.

There shall be no order as to costs.

(Rajiv Sharma), Judge

May 21, 2007
Awasthi